

In the Matter of Merchant Mariner's ~~Order No. DZ-106778~~ and All
Others Seaman No. 106778
Issued to: PETER W. OLSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1277

PETER W. OLSON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 23 September 1960, an Examiner of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that, on 21 September 1960, Appellant wrongfully served as a standby oiler on board the United States SS OLYMPIC PIONEER while his document was suspended.

At the hearing, Appellant voluntarily elected to act as his own counsel. A plea of not guilty to the charge and specification was entered.

The Investigating Officer introduced in evidence the testimony of the ship's Chief Engineer and a Coast Guard officer.

In defense, Appellant made an unsworn statement that he thought the prior suspension of his document only prohibited him from signing Shipping Articles as a crew member; and that he was not questioned about, or asked to produce, his document in obtaining the standby job through the union.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

FINDINGS OF FACT

On 21 September 1960, Appellant obtained employment as a standby oil on the United States SS OLYMPIC PIONEER upon presentation to the Chief Engineer of a union assignment card dated 21 September 1960. Appellant did not have his document and was not asked to produce it. Appellant stood the 1600 to 2400 oiler watch on this date. On the following day, before Appellant was to go on watch, it was discovered that he did not have his document because it had been surrendered as a result of an examiner's order of 3 August 1960.

The decision of 3 August constitutes Appellant's only prior record. The order was a three months' outright suspension plus nine months' suspension on twelve months' probation. The decision was served on 11 August 1960.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order of revocation is too harsh because Appellant did not know the prior suspension precluded him from serving in a standby capacity. Appellant made a mistake while acting in good faith.

APPEARANCE ON APPEAL: Walthew, Warner and Keefe of Seattle, Washington,
by Robert H. Thompson, Esquire, of Counsel.

OPINION

Appellant protested vigorously that he acted in good faith. This is supported by the fact he was never asked to produce a document in order to obtain employment as a standby oiler on 21 September. The Examiner did not specifically state, in his decision, that he did not believe Appellant but stated that this was a flouting of the authority of the Coast Guard because Appellant "should have learned," during his five years service, that a seaman whose document has been suspended may not serve in any capacity on a merchant vessel required to have documented personnel on board. I agree with this statement by the Examiner. Appellant definitely violated the law as stated in 46 U. S. Code 672(i).

Nevertheless, the order will be modified, as requested on appeal, because of the contributory fault on the part of the union and the shipowner in not requiring Appellant to produce his document as a condition of employment. I take official notice of Navigation and Vessel Inspection Circular No. 7-58, dated 17 December 1958, issued by direction of the Commandant to shipowners and maritime unions, among others, to call their attention to the fact that standby and relief members of crews are required by 46 U. S. Code 672(i) to have documents.

ORDER

The order of the Examiner dated at Seattle, Washington, on 23 September 1960, is modified to provide for an outright suspension of twelve (12) months.

As so MODIFIED, the order is AFFIRMED.

J. A. Hirshfield
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 26th day of December, 1961.